



MANTSOPA

LOCAL MUNICIPALITY

(Incorporating Ladybrand, Tweespruit, Excelsior, Hobhouse & Thaba Patchoa)
(As from 6 December 2000)

Head Office

Private Bag X11 or
P.O. Box 64
LADYBRAND
9745

38 Joubert Street
LADYBRAND
9745

Tel: 051-924 0654
051-924 0655
051-924 0657
051-924 0659

Fax: 051-924 0020

Email:

mantsopa@xsinet.co.za

Area Offices

P.O. Box 76
TWEESPRUIT
9770

Tel: 051-963 0061
051-963 0067

Fax: 051-963 0110

P.O. Box 24
EXCELSIOR
9760

Tel: 051-973 0015

Fax: 051-973 0865

P.O. Box 5
HOBHOUSE
9740

Tel: 051-983 0013

Fax: 051-983 0152

Hobhouse Way 177
THABA PATCHOA
9771

Tel: 051-964 0012

Fax: 051-964 0054

File No.:8/1/26

Contact Person:
MRE MOGOPUDI

15 August 2024

PUBLIC NOTICE IN TERMS OF SECTION 116 (3) OF THE MFMA (ACT 56 OF 2003) NOTICE IN TERMS OF SECTION 116(3) OF THE LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT ACT (ACT 56 OF 2003), FOR THE PROPOSED AMENDMENT OF THE EXISTING AGREEMENT WITH THE FOLLOWING SERVICE PROVIDER:

(a) MARKET DEMAND TRADING 773 PROVIDERS: COMPILATION OF GRAP COMPLIANT ASSETS REGISTER FOR 2023/2024 FINANCIAL YEAR UNDER CONTRACT NO.SCM 62/23/24, CONTRACT PRICE: R1 455 565.60

The contract shall be amended to extend and expand the existing scope and services under the same contract terms and conditions to include ASSET VERIFICATION of the categories:

- (i) Roads and Roadside Assets
- (ii) Electricity Assets
- (iii) Water Assets
- (iv) Sewer Assets

Any interested person, body or party is hereby invited to submit written representations, comments or objections regarding Mantsopa Local Municipality's envisaged intent to amend the existing contract with Market Demand Trading 117, the existing Service Level Agreement is herewith attached for your ease of reference.

Any comments or representations against the proposed amendments must be properly motivated in writing and must be submitted by no later than Thursday, 22 August 2024 at 12:00. Such comments or representations must be deposited in the tender box located at the Municipal Head Office, 38 Joubert street in Ladybrand, in a sealed envelope, clearly endorsed: COMMENTS ON NOTICE OF AMENDMENT OF EXISTING AGREEMENT WITH MARKET DEMAND TRADING 117.

Persons who are unable to read or write but wish to participate in the process will be assisted by the Manager: Supply Chain Management, Mr. K.D Pharoe, at the SCM Office, No. 38 Joubert street, Ladybrand to transcribe their comments/ representations during office hours by appointment.


.....
MRE MOGOPUDI
MUNICIPAL MANAGER



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[nantsopa@nsimnet.co.za](mailto:mantsopa@nsimnet.co.za)

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File No.:

8/1/8/1

Contact Person: K Phatwe

07 May 2024

Market Demand Trading 773
Boardwalk Office Park, Block 12
Faerie Glen
Pretoria
0043

Attention Director/Manager

APPOINTMENT LETTER: COMPILATION OF GRAP COMPLIANT ASSETS REGISTER FOR 2023/24 FINANCIAL YEAR.

CONTRACT NO.: SCM 62/23/24.

I, Matiro Mogopodi in my capacity as the Municipal Manager of Mantsopa Local Municipality accept your (Market Demand Trading 773 (2011/000314/07), Contract No: SCM 62/23/24 for Compilation of GRAP Compliant Assets Register for 2023/24 Financial Year. The Contract Price will be R1 455 565.60 (Including VAT).

Commencement of work should only start after the Service Level Agreement has been signed by both Main Management and Chartered Accountant and Mantsopa Local Municipality.

I confirm that I am duly authorized to this appointment, as the Municipal Manager of the Mantsopa Local Municipality and I undertake to make payment for the goods/services rendered in accordance with terms and conditions of the contract, within 30 (thirty) days after the receipt of an invoice accompanied by the relevant supporting documentation.

NB: The Project Manager will be Mr. T Chaka his contact details are 078 148 8127 or tchaka@mantsopa.co.za

Yours sincerely


M. M. R. E. MOGOPODI
MUNICIPAL MANAGER

SERVICE LEVEL AGREEMENT

entered into between

MARKET DEMAND TRADING 773 (PTY) LTD

REGISTRATION NUMBER: 2011/000314/07

A private company duly incorporated in accordance with the laws of the Republic of South Africa having its chosen principal address for services of notices, pleadings, and other communications at:

Physical Address: Block 12 Boardwalk Office Park, Eros Street, Faerie Glen, Gauteng

Postal Address: PO Box 38112, Faerie Glen, Pretoria, Gauteng, 0043

Contact Number: 071 484 9629

Email Address: michael@m-demand.co.za

(Herein duly represented by Michael Van Zyl)
(hereafter referred to as the "MD")

And

MANTSOPA LOCAL MUNICIPALITY

A local Municipality established in terms of the Local Government Municipal Structures Act 1998, having its a chosen principal address for services of notices, pleadings and other

communications at

Physical Address: 38 Joubert Street, Ladybrand, 9745

Postal Address: Po Box 64, Ladybrand, 9745

Contact Number: 051 924 0654

Email Address: mm@mantsopa.co.za/ mmsecretary@mantsopa.co.za

(Herein duly represented by **MRE Mogopodi**)

(Hereinafter referred as the "**Municipality**")

(**MD** and the **Municipality** hereafter collectively referred to as the "Parties" and singularly as a "Party")

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Whereas the Municipality has requested the services of compilation of the Fixed Asset Register (FAR) for the 2023/2024 financial year that fully complies with the applicable Generally Recognized Accounting Practice (GRAP) standards and to provide skills transfer to the municipal official on the terms and conditions as set out in this Agreement.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 Unless the context indicates otherwise, the words and expressions set out below shall bear the following meanings and cognate expressions and words shall have a corresponding meaning:

- a) **"Agreement"** means this agreement and includes all annexures hereto, as well as any and all amendments made from time to time;
- b) **"Business day"** means each day of the week, excluding Saturdays, Sundays and public holidays gazetted in the Republic of South Africa from time to time;
- c) **"Municipality data"** means any and all information and records received from the Municipality, and/or made available to the Service Provider, in connection with the performance of the services;
- d) **"Municipality"** means Mantsopa Local Municipality, a municipality duly established with its principle place of business at 38 Joubert Street, Ladybrand, and its Telephone number: 051 924 0654 and Facsimile Number: 051 924 0200 which addresses it hereby selects as *domicilia citandi et executandi* for purposes of the Agreement;
- e) **"Effective date"** of this agreement is the date specified in the Appointment Letter, notwithstanding the date of signature;



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- f) **"Intellectual property"** means all intellectual property, whether or not registerable, including, but not limited to copyright, patents, proprietary and secret concepts, methods, techniques, processes, adaptations, ideas, technical specifications and testing methods;
- g) **"Laws"** means all constitutions, statutes, regulations, by-laws, codes, ordinances, decrees, rules, judicial, arbitral, administrative, ministerial, departmental or regulatory judgements, orders, decisions, rulings or awards, policies, voluntary restraints, guidelines, directives, compliance notices, abatement notices, agreements with, requirements of, or instructions by any government body; that has the force of law or is binding on either party;
- h) **"Parties"** means the Municipality and the Service Provider, individually or collectively, as the case may be;
- i) **"Personnel"** means the respective directors, officers, employees, agents, subcontractors, contractors, professional advisors or other representatives of each party;
- j) **"Services"** means the services to be rendered by the Service Provider, as fully detailed in this agreement;
- k) **"Service fees"** means the service fees payable by the Municipality to the Service Provider for the provision of the services, as set out in this agreement.
- l) **"Service provider"** means Market Demand Trading 773 (Pty) Ltd a private company with limited liability, incorporated in terms of the laws of South Africa, with registration number:2011/000314/07 and with its registered address at Block 12 Boardwalk Office Park, Eros Street, Faerie Glen, Gauteng and its Telephone number: 012 991 3122 which addresses it hereby selects as *domicilia citandi et executandi* for purposes of the Agreement; and
- m) **"Service Provider material"** means any product, system, concepts, ideas, methods, methodologies, procedures, policies, processes, know-how, templates and techniques, and intellectual property which the Service Provider has created, acquired or otherwise has rights in prior to the effective date of this agreement, and may in connection with the performance of the services, employ, provide, modify, create, acquire or otherwise obtain rights in;

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- n) **"Signature date"** means the date of signature of the agreement by the party who has signed this agreement last;
- o) **"Termination date"** means the date on which the services have been completed and payment of the service fees has been effected in full;
- p) **"VAT"** means value added tax as defined in the VAT Act; and
- q) **"VAT Act"** means the Value Added Tax Act, No 89 of 1991.
- r) **"Acceptance Date"** is the date the Service Provider accepts the appointment to render the services requested by the Municipality.
- 1.2. References to this agreement shall include the schedules and annexures hereto, as may be amended from time to time.
- 1.3. The table of contents and the headings to the clauses in this agreement are for convenient reference purposes only, shall not affect the interpretation of this agreement, and shall not limit or extend the language of the clauses to which they refer.
- 1.4. Unless a contrary intention clearly appears, words signifying the singular include the plural and vice versa, any one gender includes the other gender and natural persons include juristic persons and vice versa.
- 1.5. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of this agreement.
- 1.6. When any number of days is prescribed in this agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or gazetted public holiday.

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- 1.7. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
 - 1.8. Where any term is defined within the context of any particular clause in this agreement, the term so defined shall, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, bear the meaning ascribed to it for the purposes of this agreement, notwithstanding that the term has not been defined in this definitions and interpretation clause.
 - 1.9. Unless expressly provided as being in the sole discretion of a party, where approval, acceptance, consent or action by a party is required under this agreement, such approval, acceptance, consent or action shall be in writing and shall not be unreasonably delayed or withheld.
 - 1.10. Words and phrases defined in the main body of this agreement shall also apply in the interpretation of the same words and phrases in annexures or schedules to this agreement, save where specifically indicated to the contrary in such annexures or schedules.
 - 1.11. The expiration or termination of this agreement shall not affect such of the provisions of this agreement as expressly provide that they will operate after any such expiration or termination, or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
 - 1.12. In the event of any conflict or ambiguity between the expressions and/or provisions of the main body of this agreement and any annexure hereto, the main body of this agreement shall govern.
 - 1.13. Any reference to any statute or statutory provision is a reference to that statute or statutory provision at the signature date and as amended or re-enacted from time to time.
 - 1.14. The rule of construction that a contract be interpreted against the party responsible for the drafting or preparation of the contract shall not apply.

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- 1.15. Reference to "days" shall be construed as calendar days unless qualified by the word "business", in which case a "business day" shall have the meaning as set out in this agreement.
- 1.16. The use of the words "including", "in particular" and "otherwise" followed by a specific example or examples shall not be construed or interpreted as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of such general wording and/or specific example or examples.
- 1.17. The words "**clause**" or "**clauses**" and "**Annexure**" or "**Annexures**" refer to clauses of and Annexures to this agreement.
- 1.18. The words "**include**", "**includes**", and "**including**" shall mean "include without limitation", "includes without limitation", and "including without limitation";

2. APPOINTMENT

- 2.1. The Municipality appoints the Service Provider for the following services:
- 2.1.1. compilation of Fixed Asset Register (FAR) for the 2023/2024 financial year that fully complies with the applicable Generally Recognised Accounting Practice (GRAP) standards;
- 2.2. and the Service Provider accepts such appointment, with effect from the effective date to provide the services on the terms and conditions set out in this agreement.

3. DURATION

- 3.1. The contract shall run from Acceptance Date irrespective of the signature date and shall terminate on the 13 November 2024 or a later date upon which the Auditor General would issue an audit report for the 2023/2024 financial year.

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- 3.2. It is specifically recorded that the Service Provider will affect all corrections and adjustment that have been agreed upon by the Auditor General and the municipality on the Fixed Asset Register for 2023/2024 financial year even after the date indicated above.

4. RECITALS

- 4.1. This clause constitutes a recordal of the background to this Agreement and of the business objectives of the parties in entering into the Agreement.
- 4.2. The Client requires the services as defined in Annexure A and further requires that the Service Provider has readily available adequately educated, trained and experienced Staff to manage, implement, operate and deliver such Services.
- 4.3. Service Provider represents to the Municipality that it has the level of knowledge and experience and the Staff required by the Client to provide the Services.
- 4.4. The Municipality hereby appoints Service Provider to render the services and Service Provider accepts such appointment both subject to the terms and conditions as hereinafter set forth.

5. SERVICES

- 5.1. The Service Provider must provide the services to the Municipality as stipulated in this agreement.
- 5.2. The following Annexures are also forming part of the agreement:
- 5.2.1. Annexure A: Services to be provided by the Service Provider
 - 5.2.2. Annexure B: Officials identified for skills transfer
 - 5.2.3. Annexure C: Project Plan
 - 5.2.4. Annexure D: Service Fee
- 5.3. It is specifically recorded that other Annexures which are not part of the agreement maybe included at a later stage and shall be binding once agreed upon by both parties.

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6. SERVICE FEES

- 6.1. The Municipality shall pay the Service Provider the service fees for the services to be rendered by the Service Provider in terms of this agreement, as set out in Annexure D.
- 6.2. All amounts payable in terms of this agreement shall be inclusive of VAT unless expressly stated otherwise. The Service Provider shall provide the Municipality with a VAT invoice in the format, and containing the particulars, required by law.
- 6.3. Each invoice shall be accompanied by a report of the work done as well as a report in terms of the skills transfer. Skills transfer report must be signed by both the Service Provider and the municipal official to whom the skills were transferred.
- 6.4. In this regard, the Municipality is obliged to make payment of the relevant amounts, subject to the condition that the Municipality receives the applicable invoice from the Service Provider, and that each invoice is supported by a progress report of work done. All reporting shall be addressed to the Municipal Manager and Chief Financial Officer and should be done on a regular basis or as agreed between the parties. The report shall be in writing and should also be forwarded to the aforementioned electronically. The reports should comprise of both quantitative and qualitative information relating to the project.
- 6.5. In line with the Municipal Finance Management Act, the Municipality shall pay all invoices received within 30 days from date of receipt of the invoice and the necessary supporting documentation. Where the municipality is unable to pay on time, such will be communicated with the Service Provider well on time.
- 6.6. The services shall be performed in accordance with the project plan as set out in Annexure C to this agreement.
- 6.7. Annexures C and D to this agreement shall be reviewed by the parties as and when required/need arises.

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6.8. The Service Provider shall have the right to withhold performance of the services in the event non-payment of the service fees by the Municipality, for any reason whatsoever, having written given notice to the Municipality of its intention to withhold performance.

7. SERVICE PROVIDER OBLIGATIONS

7.1. Should the Service Provider encounter any problem or identify any trend in relation to any aspect of the services, which could cause, or which indicates the likely occurrence of faults or defects in such services, or the interruption of the Municipality's business, it shall immediately report such matter to the Municipality.

7.2. The Service Provider shall utilise suitably qualified and trained personnel to provide the services to the Municipality in terms of this agreement, provided that the Service Provider shall be entitled, in its sole discretion, to allocate personnel resources in accordance with the skills and knowledge required, provided further that any exercise of such discretion shall not negatively impact upon the provision of the services by the Service Provider to the Municipality.

7.3. The Service Provider shall carry out its duties with the degree of care and skill reasonably expected in the industry.

7.4. The Service Provider shall at all times, disclose all and any factors of information which comes to the attention of the Service Provider, that may benefit or alternatively adversely affect the Municipality in writing.

7.5. The Service Provider shall disclose limitations on the performance of its obligations and consequential implications to the quality of the financial statements in writing to the Municipality.

7.6. The Service Provider shall carry out and perform all of its duties and obligations as set out in this Agreement and it acknowledges that it is not entitled to cede or assign or delegate any of its duties or obligations to any other party nor may the Service Provider alter and/or change its membership, without the prior written consent of the Municipality.

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7.7. The Service Provider must, on provision of advance, attend all meeting sessions convened by the Municipality in order to discuss the project managed by the Service Provider.

7.8. The Service Provider may not without the written consent of the Municipality subcontract any of the services specified in terms of this agreement. Written consent to allow subcontracting will in no way discharge the Service Provider of any obligation in terms of the agreement.

8. SERVICE PROVIDER'S TEAM / STAFF

The Service Provider will second their Staff Members / Consultants to this project for its duration as per the proposal received by the Municipality and where a specified resource become unavailable be replaced with a similar qualified resource.

8.1. It is specifically agreed that the service provider resources will perform their duties / tasks on site at municipal offices in Ladybrand or remotely where possible dependent on the task to be performed by the resource.

8.2. The Municipality reserves the right to implement controls to ensure compliance with the above mentioned requirement with controls communicated to the service provider in advance.

9. REVIEW OF THE WORK

9.1. All the work performed by the officials mentioned above shall be reviewed by the Service Provider for quality prior to submission to the Municipality or other external parties.

9.2. All work/reports submitted to the Municipality shall be accompanied by a confirmation from the Project Manager confirming that he/she has reviewed the work and it's free from material errors and that no material adjustments will be necessary during audit.

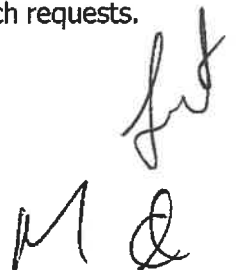
10. DELAYS IN THE SERVICE PROVIDER'S PERFORMANCE

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- 10.1. Performance of the services shall be made by the Service Provider in accordance with the scope of work herein and time frames set out in here and/or Annexures.
- 10.2. If at any time during performance of its obligations in terms of this Agreement, the Service Provider or its subcontractor(s) encounter conditions impeding timely performance of the services, the Service Provider shall promptly notify the Municipality in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the Service Provider's notice, the Municipality shall evaluate the situation and may at its discretion extend the time frames set out in here and/or Annexures, in which case the extension shall be ratified in writing by the Parties by amendment of this Agreement.

11. THE MUNICIPALITY'S OBLIGATIONS

- 11.1. In order to enable the Service Provider to provide the services, the Municipality shall allow the Service Provider reasonable access to all necessary municipal facilities, assets, data, equipment, personnel, software and documentation.
- 11.2. Without derogating from above clause, the Municipality shall provide the Service Provider with all assistance, premises and facilities reasonably required by the Service Provider from time to time to enable the Service Provider to comply with its obligations in terms of this agreement.
- 11.3. The Municipality shall respond to all requests from the Service Provider for information or decisions, access to municipal facilities, assets, data, equipment, personnel, software, documentation and so on, on an expedited basis; and the Municipality shall be solely responsible for any delay in the project plan and delivery of deliverables and services set out in Annexure C, and liable for any additional expenses and/or fees incurred by the Service Provider, as a result of a failure by the Municipality to respond timeously to any such requests.



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12. WARRANTIES

12.1. The Service Provider warrants that it shall, at all times:

12.1.1. Possess and have the knowledge, skills and expertise, necessary to enable it to provide the services in terms of this agreement;

12.1.2. Use and adopt best practice professional techniques and standards; and

12.1.3. Provide the services with due care, skill and diligence.

12.2. The Service Provider warrants that the individual representing the Service Provider in terms of this Agreement is duly authorised to do so, via a company resolution which was passed authorising this individual to bind the Service Provider to the terms and conditions set out in the Agreement;

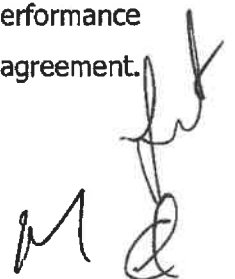
12.3. The Service Provider warrants the correctness of information disclosed in any reports submitted by it in terms of this Agreement.

12.4. The Service Provider warrants that it will not represent itself to be the agent of the Municipality in any manner whatsoever without the written consent of the Municipality. In this regard the Service Provider indemnifies and holds the Municipality harmless from any unauthorized act or omission which the Service provider may render at any time when attending to the carrying out of its duties and obligations as set out in this Agreement.

12.5. The Municipality warrants that:

12.5.1. All data and information provided to the Service Provider is accurate, true and complete as far as possible and to the best knowledge of the municipality.

12.5.2. It is not in violation of any applicable laws, which violations would affect its performance under this agreement, or would constitute a breach of any provision of this agreement.

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12.5.3. It has the necessary power and authority to execute, deliver and perform its obligations under this agreement, has taken or caused to be taken all steps, actions and corporate proceedings necessary to cause this agreement to be binding on it and that this agreement constitutes a legal, valid and binding obligation of the Municipality.

12.5.4. It has complied with all applicable Laws (including the Constitution of the Republic of South Africa, 1996, the Preferential Procurement Policy Framework Act No. 5 of 2000, the Public Finance Management Act No. 1 of 1999, and (where applicable) the Local Government: Municipal Finance Management Act No. 56 of 2003), in the conclusion of this agreement.

12.5.5. The Municipality warrants that the individual it nominates as the Municipal Manager is a duly authorized representative of the Municipality in terms of relevant delegation and, without limitation, is authorized to bind the Municipality as per the terms of this Agreement.

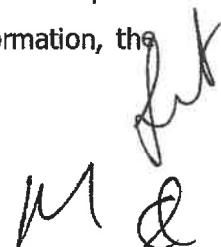
13. CONFIDENTIALITY

13.1. Each party ("the receiving party") must treat and hold as confidential all information, which it may receive from any other party ("the disclosing party") or which becomes known to it concerning the disclosing party during the currency of this agreement.

13.2. The receiving party agrees that in order to protect the proprietary interest of the disclosing party in its confidential information:

13.2.1. It will only make the confidential information available to those of its personnel who are actively involved in the execution of this agreement and then only on a "need to know" basis;

13.2.2. It will initiate internal security procedures, reasonably acceptable to the disclosing party, to prevent unauthorised disclosure and will take all practical steps to impress upon those personnel who need to be given access to confidential information, the secret and confidential nature thereof;



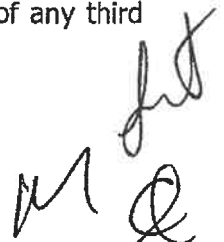
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- 13.2.3. Subject to the right to make the confidential information available to their personnel under this agreement, it will not at any time, whether during this agreement or thereafter, either use any confidential information of the disclosing party or directly or indirectly disclose any confidential information of the disclosing party to third parties;
- 13.2.4. All written instructions, drawings, notes, memoranda and records of whatever nature relating to the confidential information of the disclosing party which have or will come into the possession of the receiving party and its personnel, will be, and will at all times remain, the sole and absolute property of such the disclosing party and shall be promptly handed over to the disclosing party when no longer required for the purposes of this agreement.
- 13.3. Upon termination or expiry of this agreement, the parties will deliver to each other or, at the disclosing party's option, all originals and copies of confidential information in their possession.
- 13.4. The foregoing obligations shall not apply to any information which:
- 13.4.1. Is lawfully in the public domain at time of disclosure;
- 13.4.2. Subsequently becomes part of the public domain by publication or otherwise through no breach by any of the parties hereto;
- 13.4.3. Subsequently becomes lawfully available to the receiving party from a source other than the disclosing party without any restriction on the disclosure of such confidential information; or
- 13.4.4. Is disclosed pursuant to a requirement or request by operation of law, regulation or court order.
- 13.5. The receiving party hereby indemnifies the disclosing party against any loss or damage, which the disclosing party may suffer as a result of a breach of this clause by the receiving party or its personnel, subject to the limitations as contained in this agreement.

14. CONFLICT OF INTEREST

- 14.1. The Service Provider shall avoid any conflict of interest that may arise during the period of this agreement.
- 14.2. The Service Provider shall notify the Municipality as soon as reasonably possible, in writing of any matters that constitutes or that may potentially give rise to a conflict of interest.
- 14.3. Service Provider shall always act in the best interest of the Municipality in all matters relating to this Agreement.

15. DATA AND INTELLECTUAL PROPERTY

- 15.1. Ownership in the municipality's data shall continue to vest in the Municipality and the Service Provider shall not obtain any proprietary rights in the municipality's data.
- 15.2. Save as otherwise provided, and upon full and final payment of all service fees to the Service Provider, any product delivered to the Municipality pursuant to the provision of the services ("**deliverables**"), shall become the property of the Municipality.
- 15.3. To the extent that the Service Provider grants to the Municipality, upon full and final payment of all service fees, a non-exclusive licence to use the Service Provider material, the Municipality undertakes to use such Service Provider material only in connection with the deliverables.
- 15.4. It is recorded for the sake of completeness that the Service Provider shall own all right, title and interest, including but not limited to all rights under all intellectual property laws, in and to the Service Provider material.
- 15.5. The Service Provider warrants that no aspects of the services or any deliverables provided in terms thereof will infringe any intellectual property or other proprietary right of any third party ("**Third Party Proprietary Rights**").

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15.6. The Service Provider may develop software, including spreadsheets, documents, databases, slides and other electronic tools to assist the Municipality with the project. In some cases these aids may be provided to the Municipality upon request. As these tools were developed specifically for the Service Provider's purposes and without consideration of any purpose for which the Municipality might use them, they are made available on an "as is" basis for the Municipality's use only and should not be distributed to or shared with any third party. Further, the Service Provider makes no representations or warranties as to the sufficiency or appropriateness of the software tools for any purpose for which the Municipality may use them. Any software tools developed specifically for the Municipality shall be covered under a separate agreement.

16. LIMITATION AND EXCLUSION OF LIABILITY

- 16.1. Each party's total liability for direct damages for any claim arising out of this agreement shall be limited to a maximum amount equal to the amount to be paid by the Municipality to the Service Provider in terms of this agreement, as fully set out in **Annexure D**. The maximum liability stipulated in this clause is the aggregate liability for all claims whether arising out of contract, delict or otherwise.
- 16.2. No party will be liable to the other party or any cessionary or third party claiming through or on behalf of such party for any indirect, special or consequential damages arising out of or related to this agreement.
- 16.3. The Service Provider shall not be liable for any loss, damages, costs or expenses directly or indirectly incurred as a result of information supplied by or misrepresentations, negligent or dishonest acts or omissions on the part of the Municipality, its employees or agents.
- 16.4. The limitation of liability in this clause shall not apply to the extent that any liability arises out of acts, omissions, or misrepresentations which are in any way criminal, dishonest or fraudulent.

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17. NON-EXCLUSIVITY

17.1. Nothing in this agreement shall be construed as creating an exclusive relationship between the parties and the Service Provider may provide services of a similar or identical nature to the services contemplated in this agreement to other parties requiring such services from time to time.

18. RELATIONSHIP OF THE PARTIES AND DUTY OF GOOD FAITH

18.1. Nothing in this agreement shall be construed as constituting a temporary employment services relationship as contemplated in section 198 of the Labour Relations Act, 1995.

18.2. Nothing in this agreement shall be construed as creating a partnership or joint venture between the parties and none of the parties shall have any authority to incur any liability on behalf of any other or to pledge the credit of any other party.

18.3. Neither party shall act as the agent of the other nor have the authority, or represent that it has the authority, to bind the other party.

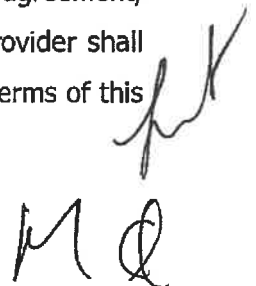
18.4. No person who is not a party to this agreement shall have any rights under the agreement to enforce any of its terms.

18.5. The parties shall at all times owe each other a duty of good faith.

19. ASSIGNMENT AND SUB-CONTRACTING

19.1. The parties shall not be entitled to assign or otherwise transfer the benefit or burden of all or any part of this agreement.

19.2. The Service Provider shall have no right to sub-contract its obligations under this agreement, except for services that are of specialised nature, provided that the Service Provider shall remain responsible to the Municipality for the performance of its obligations in terms of this agreement.

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19.3. Should the Service Provider cede any of its obligations as contemplated herein, the Service Provider shall furnish the Municipality with a copy of the Cession Agreement concluded with the cedent.

20. Service provider's warranties

20.1. Market Demand represents and warrants that it shall at all times:

20.1.1. use adequate numbers of qualified individuals with suitable training, education, experience, and skill to perform in accordance with the Service Levels;

20.1.2. use and adopt any standards and processes required under the Agreement;

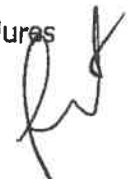

20.1.3. provide the Services with promptness and diligence and in a workmanlike manner in accordance with the proper service levels and in accordance with the practices and high professional standards used in well-managed operations performing Services of a similar nature;

20.1.4. perform its responsibilities under the Agreement in a manner that does not infringe, or constitute an infringement or misappropriation of, any Intellectual Property or other proprietary rights of any third party;

20.1.5. remains fully compliant with all applicable laws affecting the Services;

21. ELECTRONIC COMMUNICATIONS

21.1. During the agreement the Service Provider and the Municipality may from time to time communicate electronically with each other. However, the electronic transmission of information cannot be guaranteed to be secure or virus or error free and such information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete or otherwise be adversely affected or unsafe to use. The parties recognise that systems and procedures cannot be a guarantee that transmissions will be unaffected by such hazards.

21.2. The parties confirm that each accepts the risks of and authorise electronic communications between them. The parties each agree to use commercially reasonable procedures to check for the then most commonly known viruses before sending information electronically. The parties shall each be responsible for protecting their own systems and interests in relation to electronic communications and the parties shall have no liability to each other on any basis, whether in contract, delict (including negligence) or otherwise, in respect of any error, damage, loss or omission arising from or in connection with the electronic communication of information between them and their reliance on such information.

22. FORCE MAJEURE

22.1. No party shall be liable for any failure to fulfil its obligations under this agreement if such failure is caused by any circumstances beyond its reasonable control, including but not limited to flood, fire, earthquake, war tempest, hurricane, and industrial action beyond the control of either party, amendment of any applicable laws or acts of God.

22.2. Should a party be unable to fulfil a material part of its obligations under this agreement for a period in excess of 30 cumulative days in any 60 day period due to circumstances beyond its reasonable control, as recorded above, the other party may cancel this agreement forthwith by written notice.

23. BREACH

23.1. Should a party commit a material breach of this agreement ("the defaulting party"), which for the avoidance of doubt will include a breach of any warranty set out in this agreement, and, fail to remedy such breach within 14 (fourteen) days of written demand from the other party, then such other party may, in addition to any other rights and remedies that it may have:

23.1.1. Claim specific performance; and / or



23.1.2. Terminate this agreement or the services to which such breach relates, such termination to be effective immediately upon receipt by the defaulting party of written notice to that effect.

23.2. In the event that any party:

23.2.1. Is placed in provisional or final liquidation, whether compulsory or voluntary; and/or

23.2.2. Is placed under business rescue, whether subject to a provisional or final order; and/or

23.2.3. On or after the effective date commits any act or omission which would render it liable to be liquidated; and/or

23.2.4. On or after the effective date admits in writing that it is unable to pay its debts timeously or at all; and/or

23.2.5. Makes an assignment for the benefit of all or substantially all of its creditors; and/or

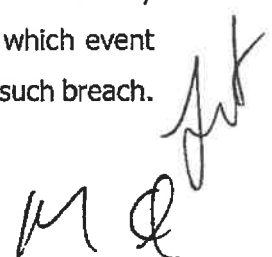
23.2.6. Allows any judgement granted against it to remain unsatisfied for a period of 10 (ten) calendar days after such judgement comes to the attention of any party; and/or

23.2.7. Is found guilty (in relation to this agreement or the project to which it relates) of bribery or similar conduct; and/or

23.2.8. Enters into an agreement for the composition, extension, or readjustment of substantially all of its obligations, then the other party may terminate this agreement forthwith by written notice.

24. TERMINATION

24.1. The Service Provider shall be entitled to terminate this agreement by mutual consent by giving the client at least 30 [thirty] days prior written notice to such effect in which event the municipality has breached this agreement and being in no position to correct such breach.

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- 24.2. The Service Provider shall have no liability to the Municipality with respect to a termination based on the above clause, and the Municipality shall be liable to the Service Provider for all accrued service fees in respect of services rendered in accordance with this agreement prior to the date of termination.
- 24.3. In the event that this agreement is declared to be invalid and is rendered unenforceable against the Service Provider due to a failure by the Municipality to comply with any applicable laws insofar as those applicable laws relate to the procurement of goods and services by organs of state (including, without limitation, the Constitution of the Republic of South Africa, 1996, the Preferential Procurement Policy Framework Act No. 5 of 2000, the Public Finance Management Act No. 1 of 1999, and where applicable the Local Government: Municipal Finance Management Act No. 56 of 2003); and/or any approvals required to authorise this agreement ("**procurement failure**"); the Service Provider shall be entitled to damages from the Municipality, regardless of whether the procurement failure was as a consequence of negligence or fraud on the part of the Municipality.
- 24.4. The provisions of the above clause shall survive the termination or declaration of invalidity of this agreement as a consequence of any procurement failure on the part of the Municipality.

25. DISPUTE RESOLUTION

- 25.1. The parties accept that disputes may arise between them during the course of this agreement.
- 25.2. Any dispute which arises shall be referred to the project steering committee or such similar committee as may be constituted comprising members of each party, or alternates appointed by them, who will use their best endeavours to resolve the dispute within 14 (fourteen) days of the dispute having been referred to them.
- 25.3. Should the project steering committee, or such similar committee as may be constituted, be unable to resolve a dispute in accordance with the foregoing, such dispute shall be finally




resolved in accordance with the rules of the Arbitration Foundation of Southern Africa ("AFSA") by an arbitrator appointed by AFSA.

25.4. Failing the resolution of the dispute as envisaged in this agreement, either party to this agreement may demand that a dispute be referred to arbitration by giving written notice to that effect to the other party in accordance with the provisions of the clause above. This clause shall not preclude either party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.

25.5. During any periods pending the outcome of the arbitration, the Service Provider agrees to continue to provide the services, and the Municipality agrees to continue to timeously make payment of all service fees.

25.6. The arbitration referred to in 25.3 shall be held:

25.6.1. At a venue agreed to by the parties in writing, failing such agreement at a venue determined by the arbitrator;

25.6.2. In English; and

25.6.3. With a view to such arbitration being completed on an expedited basis.

25.7. The parties irrevocably agree that the decision in arbitration proceedings:

25.7.1. Shall be final and binding upon the parties;

25.7.2. Shall be carried into effect; and may be made an order of any court of competent jurisdiction.

25.8. It is specifically agreed where the Service Level Agreement and the Proposal are not in agreement, the contents of the Service Level Agreement shall prevail and take precedent of the Proposal.

26. NOTICES AND DOMICILIA

- 26.1. The parties choose their respective *domicilia citandi et executandi* and the addresses for the purposes of giving or sending any notice provided for or required in terms of this agreement, the addresses as outlined in this agreement, or such other address or telefax number as may be substituted by notice given as herein required.
- 26.2. Any notice addressed to a party at its physical or postal address shall be sent by prepaid registered post, or delivered by hand, or sent by telefax.
- 26.3. Any notice shall be deemed to have been given:
- 26.3.1. If posted by prepaid registered post, 7 (seven) days after the date of posting thereof;
 - 26.3.2. If hand delivered, on the day of delivery;
 - 26.3.3. If sent by telefax, on the date and time of sending of such telefax, as evidenced by a fax confirmation printout, provided that such notice shall be confirmed by prepaid registered post on the date of dispatch of such telefax, or, should no postal facilities be available on that date, on the next business day;
 - 26.3.4. The parties may communicate with each other by electronic means; provided that electronic communication will not be acceptable for formal notices required to be given under this agreement. Such communication is acceptable as a signed written notice to the extent permissible under applicable laws.

27. GENERAL

- 27.1. This agreement constitutes the entire agreement between the parties in respect of the subject matter hereof and neither party shall be bound by any undertakings, representations, warranties or promises not recorded in this agreement.

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- 27.2. No variation or consensual cancellation of this agreement and no addition to this agreement shall be of any force or effect unless reduced to writing and signed by the parties or by their duly authorised representatives.
- 27.3. No waiver of any of the terms of conditions of this agreement will be binding or effectual for any purpose unless expressed in writing and signed by the party hereto giving the same, and any such waiver will be effective only in the specific instance and for the purpose given. No failure or delay on the part of either party hereto in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
- 27.4. Should any of the terms and conditions of this agreement be held to be invalid, unlawful or unenforceable, such terms and conditions will be severable from the remaining terms and conditions; and to the extent that the terms which are held to be invalid are capable of amendment to render such terms valid, the parties agree to negotiate and effect the necessary amendments to remove the invalidity.
- 27.5. This agreement will be governed by and construed in accordance with the laws of the Republic of South Africa and all disputes, actions, and other matters relating thereto will be determined in accordance with such laws.
- 27.6. Parties hereto hereby consent and submit to the jurisdiction of such High Court of South Africa, or division thereof, which has its seat in Pretoria, in any dispute arising from or in connection with this agreement.
- 27.7. The Service Provider shall maintain appropriate insurance cover in respect of any potential liability relating to its business and the provision of the services.
- 27.8. The Municipality is responsible for both the accuracy and completeness of the information supplied to the Service Provider and is responsible to users for the financial information compiled by the Service Provider. The Service Provider is responsible to confirm completeness and accuracy of the information received from the Municipality.

27.9. The Municipality undertakes to make available to the Service Provider, as and when required, all the accounting records and related financial information necessary for the performance of the Service Provider's duties as set out in this agreement.

27.10. Any services rendered by the Service Provider which are not specifically and expressly contemplated in this agreement are additional services, and the estimated fees relating to such additional services shall be communicated to the Municipality in writing.

Signed at _____ on the _____ 2024 for and on behalf of the Municipality by

Full Names: _____

Capacity: _____

Signature: _____

Who warrants that he is duly authorised

Municipal Witness:

Full Names: _____

Capacity: _____

Signature: _____

Signed at Peoria on the 12 June 2024 for and on behalf of the Service Provider by

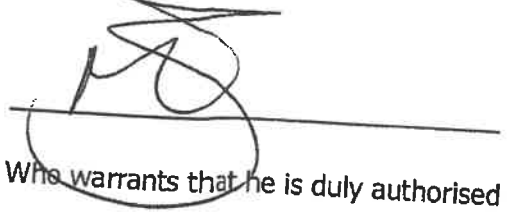
Name:

MICHAEL VAN ZYL

Capacity:

MANAGING DIRECTOR

Signature:


Who warrants that he is duly authorised

Service Provider Witness:

Full Names:

Robyn Prevost.

Capacity:



ANNEXURE A
SERVICES TO BE PROVIDED BY THE SERVICE PROVIDER

The scope of the work entails review/compilation/updating of the Fixed Asset Register for 2023/24 financial year to ensure that FAR meets all the assertions on assets (i.e., ownership, existence, completeness; valuation, etc.);

1. The project will entail detailed analysis and correction of specific problems (i.e., misallocations, known-errors, etc.);
2. Review of the financial records and assistance with adjusting journals to ensure accuracy / correctness of the Trial Balance figures;
3. Assist with the year-end stock count
4. The draft FAR must be ready by Wednesday, 16th August 2024 for a detailed presentation to the relevant stakeholders in the municipality and for submission to the municipality to consolidate into the AFS. The draft FAR must be ready by Wednesday, 23th August 2024 for submission to the Audit Committee/Internal Audit Unit for review;
5. Addressing audit queries raised by Auditor General during audit (that is on the 2023/24) and adjust accordingly where necessary / as agreed upon with the AGSA;
6. Detailed skills transfer program for the purpose of skills transfer to municipal officials who will be seconded to this project.

The following notes to the scope of work submitted by the Service Provider:

1. Our primary focus for compiling the 2024 FAR will be to thoroughly document the current year's additions, conduct unbundling and verification of work in progress, investigate findings from the previous year, and intervene where possible.
2. A comprehensive assessment of assets hasn't been priced, as it wasn't outlined within the scope of work specified in the tender document. Nonetheless, Point 4.1

in the scope of work mandates that the FAR fulfils all assertions regarding assets, including their existence and completeness. Achieving this may prove challenging given that asset verification was omitted from the published scope of work.

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ANNEXURE B

The following are municipal officials who have been identified by the Municipality to be seconded to the project and to whom skills transfer must be done:

NAME OF THE OFFICIAL	AREA OF SKILLS TRANSFER
<ul style="list-style-type: none"> • Mmuso Motloun (Fleet & Asset manager) • Me. Lesoetsa (Director: Community Development) • K. Koalane (Acting PMU Technician) • T. Mphezulu (Fleet and Asset Accountant) • P. Yangaphi (Accountant Income) • K. Seleke (Budget Manager) • Chaka (Revenue Manager) • Pharoe (Supply Chain Manager) 	<p>Capacity building and skills transfer must be undertaken in the following areas:</p> <ol style="list-style-type: none"> 1. Biological assets; Intangible assets; Investment property; other financial assets; Property, plant and equipment; Depreciation and amortisation; Inventory and stores items; Loss / income on disposal of assets; Leases and Borrowings. <ul style="list-style-type: none"> • Capacity building and skills transfer must be undertaken in the following areas:

- a) The Service Provider shall conduct a workshop (or use any other method) to determine the level of qualification and experience of the officials seconded to this project after appointment / signing of this Agreement.
- b) It is the condition of the Agreement that the Service Provider will submit a Training Report to this effect and such report must accompany all invoices.
- c) It must be noted that officials seconded to this project are still responsible for their day to day responsibilities as such planning must be done to accommodate the existing operational requirements.
- d) Any deviations in terms of officials seconded to this project not meeting the agreed upon dates must be communicated in writing to the Chief Financial Officer.

ANNEXURE C
PROJECT PLAN

The Project plan is not included and will be discussed with the Parties on a regular basis and be reviewed as and when the need arises.

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ANNEXURE E
ADDITIONAL SCOPE

Refer to Annexure D for the quote below to perform a full verification of the existing FAR line items.

EXISTING FAR VERIFICATION

#	ITEM	Included	Line cost	Group cost		Total Year 1
1	ASSET VERIFICATION					870,699.35
	Roads and Roadside Assets			323,751		
	Electricity Assets			158,149		
	Water Assets			312,528		
	Sewer Assets			76,272		
					Sub-Total	<u>870,699.35</u>
					VAT - 15%	<u>130,604.90</u>
					Disbursements	<u>87,069.93</u>
					TOTAL	<u>1,088,374.18</u>

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